

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# 76-1439

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

ALBERT DUKE,

Defendant-Appellant.

Docket No. 76-1439

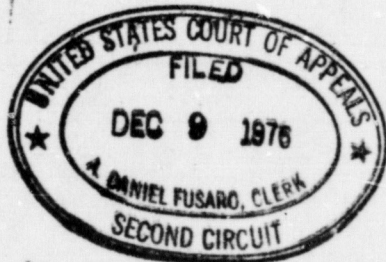
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APPENDIX TO APPELLANT'S BRIEF

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ON APPEAL FROM A JUDGMENT  
OF THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,  
THE LEGAL AID SOCIETY,  
Attorney for Appellant  
ALBERT DUKE  
FEDERAL DEFENDER SERVICES UNIT  
509 United States Court House  
Foley Square  
New York, New York 10007  
(212) 732-2971

PHYLIS SKLOOT BAMBERGER,  
Of Counsel.

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DUKE, ALBERT a/k/a  
"Alphonso Johnson"

06 21 76 0577

0200-01

02

18:271  
16:2314

Consp. to transport stolen securities.  
Interstate transportation of forged securities.

9/54

n/9/76

ARREST	INDICTMENT	ARRAIGNMENT	TRIAL
3-12-76	6-21-76	7-1-76	8-25-76
		7-1-76	8-25-76
			2-30-76

DATE	FILE NO.	CHARGE
3/12/76	S.S.080E	
3/12/76	S.S.080E	
18 USC 2314 and 2		TRANSPORT STOLEN SECURITIES IN INTERSTATE COMMERCE

Audrey Strauss  
791-1937

Wm. Raines  
209 W.125 St, NYC 10027 666-0516

E.F.

DATE	PROCEEDINGS
3/12/76	Complaint filed, warrant issued
3/18/76	Defendant presented, represented by Michael Raines, Esq., 209 W. 125th St., N.Y. Defendant released on bail. address: 920 Therroid Ave., Ex., N.Y.
5/21/76	Indictment filed, 76 Cr. 577
6-24-76	Adjourned to 7-1-76 at 2:00 P.M. Bail continued \$10,000. P.R.B.
7-1-76	Def. Albert Duke (present) Atty: William C. Raines-(not pr Court directs plea of Not Guilty to be entered. Bail : \$10, continued. Assigned WEINFELD.J. for all purposes.....KNAPP.
7-6-76	Filed magistrates papers also including bond in the amt. of \$10,000 PRB(unsecured) and notice of appearance by Wm.Rain 209 W.125 St, NYC 10027
07-14-76	Case called. Def. Duke present. Atty. Wm. Raines not pre Adj. to 7-15-76, 3 PM - Def. and Attorney ordered to appea Weinfeld, J.
07-14-76	Case called. Def. Duke present. Atty. Wm Raines not pres US Attorney directed to prepare OSC why Wm. Raines should n held in contempt of court. -- Weinfeld, J.

- 7-19-76 Case called. Deft. present with atty. Wm. Raines. Atty. advised of any further representation in this matter. Court finds reasonable doubt as to whether he filed notice of appearance before the Magistrate. Matter of his failure to appear on 7/13/76 referred to Chief Judge of court for appropriate action. Deft. given until 7/21/76 to obtain counsel failing which the court will appoint one of its own. Adj. to 7/27/76 at 10am. Weinfield, J.
- 7-22-76 Case called. Deft. and new atty. Joel Aurnon present and file notice of appearance for deft. Trial set for 8/23/76 at 10am Rm 516. Weinfield, J.
- 7-22-76 Filed defts. notice of appearance by:  
Greenspan and Aurnon  
14 Mamaroneck Ave, White Plains, NY 10601 914-946-2590
- 7-26-76 Filed transcript of record of record of proceedings dtd. 7/19/76.
- 7-26-76 Filed transcript of record of proceedings dtd. 7/21/76.
- 7-26-76 Filed answer of Wm. Raines (atty.) to OSC.
- 8-23-76 Filed Order to Show Cause that William C. Raines in contempt of court. Ret. 7-19-76
- 8-23-76 Filed memo and, on above OSC--motion granted to the extent of referring the matter to the Chief Judge of this Court for such action, as he may decide, etc. Weinfield J.
- 8-25-76 Trial Begun as to Deft. before Weinfield, J. with a Jury.
- 8-25-76 Trial continued and Adj. To Mon. 8-30-76 at 10am in Rm. 516
- 8-30-76 Trial Continued and Concluded--Jury retires to begin Deliberations at 2:30 PM 4:00PM Jury Returns Verdict of guilty on Cts. one(1) and Two(2) as to Deft Duke. PSI Ordered. Sat. Adj. to Tues 9-14-76 at 2:15PM in Rm 906. Gov'ts application to have Bail revoked and deft. Remanded is granted. Weinfield, J.
- 8-31-76 Filed Transcript of record of proceedings, dated 7-14-76
- 8-31-76 Filed Transcript of record of proceedings, dated 7-15-76
- 8-16-76 Filed JUDGMENT (atty. Joel Aurnon, present)--the deft. is hereby committed to the custody of the Atty. General or his authorized representative for imprisonment for a period of SEVEN(7) YEARS on ct. 2., and FIVE(5) YEARS on ct. 1 to run concurrently with the sentence imposed on ct. 2. Weinfield, J. (copies issued)
- 9-24-76 Filed defts. notice of appeal to the USCA from the judgment entered on 9/16/76. (copies mailed to HABASARIX AUSA and to defts. atty.) Greenspan and Aurnon of 14 Mamaroneck Ave, White Plains, NY 10601



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

76 CRIM. 0577

EW

UNITED STATES OF AMERICA,

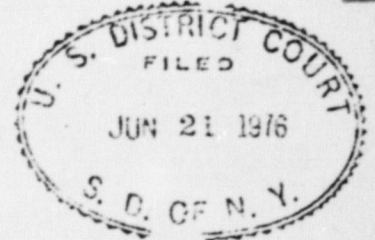
- v -

ALBERT DUKE, a/k/a "Alphonso  
Johnson," and DEBRA BRYANT,

Defendants.

INDICTMENT

76 Cr.



COUNT ONE

The Grand Jury charges:

1. From on or about the 1st day of August, 1975 up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, ALBERT DUKE, a/k/a "Alphonso Johnson" and DEBRA BRYANT, the defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together with each other and with other persons, to the Grand Jury known and unknown, to commit certain offenses against the United States, to wit, to violate Title 18, United States Code, Section 2314.

2. It was a part of said conspiracy that the defendants, ALBERT DUKE, a/k/a "Alphonso Johnson" and DEBRA BRYANT, and the said co-conspirators, would and did transport and cause to be transported in interstate commerce securities of the value of \$5,000 or more, to wit, security certificates representing 1000 shares of Royal Dutch Petroleum Company, 500 shares of International Nickel of Canada, Limited, 300 shares of Vetco Offshore Industries, Inc., and 100 shares of Philadelphia Electric Company, knowing the same to have been stolen, converted, and taken by fraud.

OVERT ACTS

In furtherance of said conspiracy, and to effect the objects thereof, certain overt acts were committed by the defendants in the Southern District of New York, including the following:

1. On or about August 1, 1975, the defendants ALBERT DUKE, a/k/a, "Alphonso Johnson," and DEBRA BRYANT met at a bar in New York, New York.
2. In August, 1975, DEBRA BRYANT stole securities from Pershing & Co., 120 Broadway, New York, New York.
3. In August, 1975 DEBRA BRYANT gave securities stolen from Pershing & Co. to ALBERT DUKE at 1 Chase Manhattan Plaza, New York, New York.
4. On or about January 2, 1976, ALBERT DUKE, went to Merrill Lynch Pierce Fenner & Smith, Inc. (hereinafter "Merrill Lynch"), Penn Center Plaza, Philadelphia, Pennsylvania.
5. On or about January 2, 1976, ALBERT DUKE attempted to open a brokerage account under the fictitious name "Alphonso Johnson."
6. On or about January 16, 1976, ALBERT DUKE, a/k/a "Alphonso Johnson," mailed a package, containing the stolen securities, from the Fort Washington Post Office, 377 Broadway, New York, New York, to Merrill Lynch, Philadelphia, Pennsylvania.

(Title 18, United States Code, Section 371).

COUNT TWO

The Grand Jury further charges:

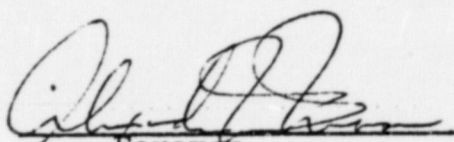
On or about January 16, 1976, in the Southern District of New York, ALBERT DUKE, a/k/a "Alphonso Johnson" and DEBRA BRYANT, the defendants, unlawfully, wilfully and knowingly did transport and cause to be transported in interstate commerce from New York, New York to Philadelphia,

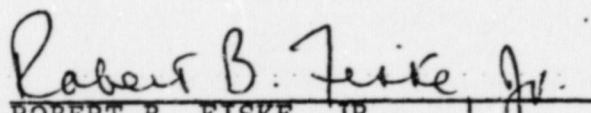


AS:nc  
n-2148

Pennsylvania securities of a value exceeding \$5,000, to wit, \$71,000 worth of securities, knowing the same to have been stolen, converted, and taken by fraud.

(Title 18, United States Code, Sections 2314 and 2)

  
Foreman

  
ROBERT B. FISKE, JR.  
United States Attorney

SEPTEMBER 13, 1976

DEFT DEBRA BRYANT (ATT JOSEPH STONE PRESENT) SENTENCED.

PURSUANT TO §5010(a) of T.18, USC, DEFT SENTENCED AS A YOUTH OFFENDER.

IMPOSITION OF SENTENCE ON COUNT 1 SUSPENDED.

-AND-

DEFT PLACED ON PROBATION FOR A PERIOD OF 2 YRS, SUBJECT TO THE STANDING PROBATION ORDER OF THIS COURT.

COUNT 2 IS DISMISSED ON MOTION OF DEFT'S COUNSEL WITH THE CONSENT OF THE GOV'T.

WEINFELD, J.

SEPTEMBER 13, 1976. DEFT ALBERT DUXE (ATTY JOEL AURNOW PRESENT) SENTENCED

DEFT IS HEREBY COMMITTED TO THE CUSTODY OF THE ATTORNEY GENERAL OR HIS AUTHORIZED REPRESENTATIVE FOR IMPRISONMENT FOR A PERIOD OF SEVEN (7) YEARS ON CT 2  
AND

FIVE (5) YEARS ON COUNT 1 TO RUN CONCURRENTLY WITH EACH OTHER.

DEFT ADVISED OF HIS RIGHT TO APPEAL  
DEFT REMANDED.

WEINFELD, J.





## United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

ALBERT DUKE, a/k/a "Alphonso  
Johnson," and DEBRA BRYANT,

Defendants.

## INDICTMENT

76 Cr.

In violation of Title 18, United  
States Code, sections 371, 2314  
and 2.

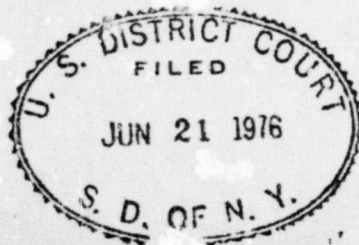
ROBERT B. FISKE, JR.

United States Attorney.

A TRUE BILL

  
Foreman.

FPI-88-2-19-71-20M-6950



6-24-76- ADJ- 7-1-76-

Bail continued. as to  
each deft.

(Albert Duke - \$10,000. PRB.)

July 1, 1976-

 Deft. Albert Duke (present) atty: William C.  
Court directs plea of NOT (Raines - (not present) -  
Guilty to be entered. Bail: \$10,000. PRB-continued.  
(El. 666-0516)

 Deft. DEBRA BRYANT - (atty: Joseph Stone  
& please NOT GUILTY. Ordered F.P. (present.)  
Bail: \$5000. P.R.B. assigned Weinfield, J.  
for all purposes.

 Knapp, J.  
JH

July 14, 1976 -

 case called. Deft. Albert Duke present. atty. Wm. Raines  
not present. adj. to 7-15-76, 3 p.m. Deft. & atty ordered  
to appear.

Weinfield, J.

Knapp, J.





Deft DEBRA BRYANT (Atty. Joseph Stone present) withdraws plea of not guilty and enters plea of guilty to Count One only. Pre-sen report ordered - sentence set for 8-19-76 at 10 a.m. Bail cont.

J. Weinfeld,

July 15, 1976 - Case called. Deft. Albert DUKE present. Atty. Wm. Raines not present. Adj. to 7-19-76, 3 p.m. U.S. atty directed to prepare order to show cause why Wm. Raines should not be held in contempt of court.

J. Weinfeld, J.

July 19, 1976 - Case called. Deft. DUKE present. Atty. Wm. Raines present, Wm. Raines relieved of any further representation in this matter. Court finds reasonable doubt as to whether he filed notice of appearance before the Magistrate. Matter of his failure to appear on 7/15/76 referred to the Chief Judge of this court for appropriate action. Deft. DUKE given until 7/22/76 to retain counsel, failing which the court will appoint counsel for him. Adj. to 7/22/76, 10 a.m.

Weinfeld, J.

July 22, 1976 - Case called. Deft. DUKE present. Atty. Joel Aurnau present and files notice of appearance for deft. DUKE. Trial set for 8/25/76, 10 a.m., Rm. 518.

Weinfeld, J.

AUG 25 1976 TRIAL BEGUN AS TO DEFT DUKE BEFORE WEINFELD, J. WITH A JURY (mw)

AUG 26 1976 TRIAL CONTINUED AND ADJ. TO MON 8/30, AT 10 AM IN ROOM 518 (mw)

AUG 30 1976 TRIAL CONTINUED AND CONCLUDED - JURY RETIRES TO BEGIN DELIBERATIONS AT 2:30 P. 4:00 PM JURY RETURNS VERDICT OF GUILTY ON CTS one (1) & Two (2) AS TO DEFT DUKE, PSI ORDERED, SENT ADJ. TO TUES 9-14-76 IN 2:15 PM IN ROOM 906. GOVT'S APPLICATION TO HAVE BAIL REVOKED & DEFT REMANDED IS GRANTED.

WEINFELD, J.



THE COURT'S CHARGE TO THE JURY

## AFTERNOON SESSION

THE COURT: We are now at the stage of trial where you will soon undertake your final function as jurors. You are to discharge this final duty in an attitude of complete fairness and impartiality and as was emphasized by me at the time of your selection as jurors without bias or prejudice for or against the government or the defendant as parties to this controversy.

The fact that the trial was of comparatively short duration in nowise reflects its importance. It is important to the defendant who is charged with a serious violation of law, equally, it is important to the government, for the enforcement of the criminal laws as a matter of prime concern to the welfare of the community.

Let me add the fact that the government is a party to this controversy entitles it to no greater consideration than that accorded to any other party to a controversy. By the same token, it is entitled to no less consideration.

All parties -- government, corporations, and individuals alike -- stand as equals at the bar of justice.

Your final role is to decide and pass upon the fact issues in the case. You, the members of the jury, are the sole and exclusive judges of the fact. You pass upon the weight of the evidence, you determine the credibility



of witnesses, you resolve such differences as there may be in testimony, and you draw whatever reasonable inferences may be warranted from the facts as you find them.

I shall later refer to how you pass upon or consider the credibility of witnesses. My final function is to instruct you as to the law. It is your duty to accept these instructions of law and to apply them to the facts as you may find them.

With respect to any fact matter -- and I told this to you several times just a few moments ago during the course of summation by counsel -- it is your recollection and yours alone that governs. Anything that counsel either for the government or the defense may have said with respect to matters in evidence, whether during the trial, included in a question, in argument or in summation, is not to be taken in place of your own independent recollection. So, too, anything the court may have said during the course of the trial, or may say during the course of the trial, or may say during the course of these instructions, with respect to any fact matter, again is not to be taken in place of your own independent recollection. That governs at all times.

As you know, the indictment as returned by the Grand Jury contains two counts, or two separate charges,

against the defendant and Debra Bryant.

Count 1 charges that Albert Duke, the defendant, and Debra Bryant, together with other persons to the Grand Jury known and unknown, conspired to violate the federal law prohibiting the transportation in interstate commerce of stolen securities.

Count 2 charges that the defendant and Debra Bryant transported the stolen securities in interstate commerce or caused them to be so transported.

As you know from the testimony given at this trial, Debra Bryant pled guilty to the first count of this indictment, the conspiracy count. That was her personal plea of guilty. In no respect may this fact be considered as proof or evidence in support of the charges against the defendant on trial, nor may you draw any adverse inference against him by reason thereof. In no respect may it enter into your deliberations except as it may be considered on the issue of Bryant's credibility, as to which I shall hereafter instruct you.

Guilt is personal. The guilt or innocence of Albert Duke, the defendant on trial before you, must be determined separately with respect to him and on each count wherein he is charged solely on the evidence presented against him, or the lack of evidence.



There are certain principles of law which apply in every criminal case and to which I made reference at the time of your selection as jurors. I repeat them now.

The indictment upon which the defendant is brought to trial is an accusation or a charge. It is not evidence or proof of the defendant's guilt, and no weight is to be given to the fact that a Grand Jury returned an indictment against the defendant. He has pleaded not guilty. Thus, the government has the burden of proving the charges against him beyond a reasonable doubt. He does not have to prove his innocence.

On the contrary, as I told you at that time, he is presumed to be innocent of the charges contained in the indictment. This presumption of innocence was in his favor at the start of the trial, continued in his favor throughout the trial, it is in his favor as I instruct you now, and remains in his favor during the course of your deliberations in the jury room. It is removed only if and when the government has sustained its burden of proving the charges beyond a reasonable doubt.

The question that naturally then comes up is what is a reasonable doubt. The words almost define themselves. It is a doubt founded in reason and arising out of the evidence in the case or the lack of evidence.

It is a doubt which a reasonable person has after carefully weighing all the evidence. Reasonable doubt is a doubt which appeals to your reason, your common sense, your experience, and your judgment. It is not caprice, whim, speculation, conjecture, or suspicion. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for a defendant.

If, after a fair and impartial consideration of all the evidence, you can candidly and honestly say that you do not have an abiding conviction of the defendant's guilt -- in sum, if you have such a doubt as would cause you as prudent persons to hesitate before acting in matters of importance to yourselves -- then you have a reasonable doubt, and in that circumstance it would be your duty to acquit.

On the other hand, if after such a fair and impartial consideration of all the evidence you can candidly and honestly say that do have an abiding conviction of the defendant's guilt, such a conviction as you would be willing to act upon in important matters in the affairs of your own lives, then you have no reasonable doubt, and under that circumstance it is your duty to convict.

One final word on this subject. Reasonable doubt



1       mdh  
2       does not mean a positive certainty or beyond all possible  
3       doubt.    If that were the rule few men, however guilty they  
4       might be, would be convicted, for it is practically impossible  
5       for a person to be absolutely and completely convinced  
6       of any converted fact which by its nature is not susceptible  
7       of mathematical certainty.

8               In consequence, the law in a criminal case  
9       is that it is sufficient if the guilt of the defendant  
10      is established beyond a reasonable doubt, not beyond  
11      all possible doubt.

12             A word about the difference between the two  
13      counts in the indictment. They charge different crimes.  
14      I have already mentioned that one count charges a conspiracy  
15      to violate the law, to which I shall refer as the conspiracy  
16      count.

17             The second count charges that the defendant committed  
18      or caused to be committed an actual violation of the law  
19      prohibiting the transportation in interstate commerce of  
20      stolen securities, knowing that they were stolen. This is  
21      referred to as the substantive count -- that is, the actual  
22      violation of law.

23             A conspiracy to commit a crime is an entirely  
24      separate and distinct offense from the substantive crime  
25      which is the objective of the conspiracy.    The essence of

2 the crime of conspiracy is an agreement or understanding  
3 to violate other laws. Thus, if a conspiracy exists, even  
4 if it should fail of its purpose, it is still punishable  
5 as a crime. A conspiracy, which is sometimes referred to  
6 as a partnership in crime, because it involves collective  
7 or organized action, presents a greater potential threat to  
8 the public interest than the illicit activity of a single  
9 wrongdoer. Group association or organized activity  
10 renders detection more difficult than in the instance of  
11 a lone wrongdoer.

12 It was for these and other reasons that Congress  
13 made a conspiracy or concerted or combined action to violate  
14 a federal law a crime entirely separate, distinct and  
15 different from the violation of the law or laws which may be  
16 the objective of the conspiracy.

17 Thus, Congress has provided in Section 371 of  
18 Title 18, United States Code -- that is the federal criminal  
19 laws -- as far as here pertinent, and I am quoting "If  
20 two or more persons conspire to commit any offense against  
21 the United States, and one or more of such persons do any  
22 act to effect the object of the conspiracy, each shall be  
23 guilty of a criminal offense."

24 This is the conspiracy law that the defendant  
25 is charged with violating. The federal statute which it is



1 mdh  
2 charged the defendant and others conspired to violate,  
3 and the actual violation of which is charged as the sub-  
4 stantive count under count 2, reads "Whoever transports  
5 in interstate commerce securities of the value of \$500  
6 or more, knowing the same to have been stolen, is guilty  
7 of a crime."

8 This law, generally known as the National Stolen  
9 Property Act, reflects a congressional purpose to use  
10 federal power to reach all ways and methods used to deprive  
11 an owner of his property.

12 This law seeks to reach those who aid and further  
13 such an unlawful activity by transporting stolen securities  
14 through the use of interstate facilities when they know  
15 they are stolen.

16 Against this background of the applicable  
17 statutes we turn to a consideration of the specific counts  
18 of the indictment. Since the essential elements which the  
19 government must prove in order to sustain the respective  
20 charges are different in the instance of each count we  
21 shall consider each separately. Thus, as to the first or  
22 conspiracy count the Grand Jury charges:

23 1. From on or about the 1st day of August, 1975,  
24 up to and including the date of the filing of this indictment,  
25 which is June 21, 1976, in the Southern District of New York

1 and elsewhere, Albert Duke, also known as Alphonso Johnson,  
2 and Debra Bryant, the defendants, unlawfully, wilfully,  
3 and knowingly did combine, conspire, confederate and agree  
4 together with each other and with other persons to the  
5 Grand Jury known and unknown, to commit certain offenses  
6 against the United States, to wit, to violate Title 18,  
7 United States Code, Section 2314. That was the last statute  
8 I read to you.  
9

10 2. It was a part of said conspiracy that the  
11 defendants Albert Duke, also known as Alphonso Johnson,  
12 and Debra Bryant, and the said co-conspirators, would  
13 and did transport and cause to be transported in interstate  
14 commerce securities of the value of \$5,000 or more, to  
15 wit, security certificates representing 1,000 shares of  
16 Royal Dutch Petroleum Company, 500 shares of International  
17 Nickel of Canada, Limited, 300 shares of Vetco Offshore  
18 Industries, Inc., and 100 shares of Philadelphia Electric  
19 Company, knowing the same to have been stolen, converted  
20 and taken by fraud.

21 Then there is another paragraph starting overt  
22 acts to which I shall presently refer.

23 In order to convict the defendant on count 1  
24 the government must prove beyond a reasonable doubt  
25 the following essential elements:



2 1. The existence of the conspiracy charged  
3 in the indictment.

4 2. That the defendant knowingly associated  
5 himself with the conspiracy. And,

6 3. That one of the conspirators knowingly  
7 committed at least one of the overt acts set forth in  
8 the indictment at or about the time and place alleged.

9 Now, let us consider what is a conspiracy.  
10 The idea of a conspiracy is simple. A conspiracy is  
11 a combination, agreement, or understanding of two or more  
12 persons by concerted action to accomplish a crime or  
13 unlawful purpose, in this instance the transportation  
14 in interstate commerce between New York, New York, and  
15 Philadelphia, of stolen stock certificates, knowing that  
16 they were stolen.

17 The gist of the crime is the unlawful combination,  
18 understanding, or agreement to violate the law. The success  
19 or failure of the conspiracy is immaterial to the question  
20 of guilt or innocence of the conspirator. For example,  
21 that the securities were not cashed in or that the conspirators  
22 failed to realize any proceeds on them is of no consequence.  
23 A conspiracy has sometimes been called a partnership in criminal  
24 purposes in which each member becomes the agent of every other  
25 member. To establish a conspiracy the government is not required to

show that two or more persons sat around a table and entered into a solemn pact orally or in writing stating that they formed a conspiracy to violate the law or the details or means by which its object was to be achieved.

Common sense tell tell you that when persons in fact undertake to enter into a criminal conspiracy much is left to the unexpressed understanding.

What the evidence must show in order to establish that a conspiracy existed is that two or more persons in some way or manner, through any contrivance, implicitly or tacitly came to a common understanding to violate the law or to accomplish an unlawful plan.

In determining whether there has been an unlawful agreement, you may judge acts and conduct of the alleged co-conspirators which are done to carry out an apparent criminal purpose. The adage actions speak louder than words is applicable here.

Usually, the only evidence available is that of disconnected acts and conduct on the part of the alleged said conspirators which acts and conduct however when taken together in connection with each other and considered as a whole permit an inference that a conspiracy existed as conclusively as by direct proof.

In short, items of evidence are to be viewed



2 not in isolation but in conjunction with one another  
3 and upon the totality of all the evidence. However, in  
4 this case the government contends that it has offered  
5 direct proof of the conspiracy through the testimony of  
6 Debra Bryant, an alleged co-conspirator. Additionally,  
7 it relies upon circumstantial evidence of events subsequent  
8 to those to which she has testified as additional proof  
9 to establish the conspiracy.

10 You must first determine whether or not the proof  
11 establishes the existence of the conspiracy as charged in  
12 the indictment. In deciding this first element you consider  
13 all the evidence that has been admitted with respect to  
14 the conduct, acts and declarations of each co-conspirator,  
15 and such inferences as may be reasonably drawn therefrom.  
16 It is sufficient to establish the existence of the conspiracy  
17 if from proof of all the relevant facts and circumstances  
18 you find beyond a reasonable doubt that the minds of at least  
19 two alleged co-conspirators met in an understanding way  
20 to accomplish by the means alleged the objectives of the  
21 conspiracy as charged in the indictment.

22 It is not necessary that the conspirators have  
23 actually intended that the stolen securities be transported  
24 from one state to another. It is sufficient if the proof  
25 shows that there was an agreement to participate in a scheme

2 which by its nature involved interstate transportation or  
3 reasonably contemplated the use of interstate transportation  
4 to effectuate the conspiratorial purpose and that such  
5 interstate transportation actually occurred.

6 If you do conclude that the charged conspiracy  
7 did exist you must next determine whether the defendant  
8 was a member of the conspiracy. His participation in  
9 the conspiracy, if you find one did exist, must be established  
10 by the independent evidence of his own acts, statements  
11 and conduct, as well as those of the other alleged co-  
12 conspirators, and the reasonable inferences to be drawn  
13 therefrom.

14 To find the defendant guilty of conspiracy you  
15 must find beyond a reasonable doubt that aware of its  
16 existence and its purposes he intentionally associated  
17 himself with the conspiracy and participated therein.

18 Once you are satisfied beyond a reasonable  
19 doubt that a conspiracy existed, and that the defendant  
20 was a member, then the acts and declarations of any other  
21 person found to be a member, whether named in the indictment  
22 or not, made during the pendency of the conspiracy and  
23 in furtherance of its objectives, are considered the acts  
24 and declarations of all other members, even though they  
25 were not present.



For example, assume that you find a conspiracy as charged existed and Debra Bryant was a member and that Debra Bryant stole the securities from Pershing & Company in New York, her acts would be binding on the defendant if you find that he was a member even though he was not present when she stole the securities.

The indictment charges that in addition to Duke and Bryant other persons unknown to the Grand Jury were members of the conspiracy. Accordingly, if you find that another person whose identity is unknown was a member of the conspiracy -- that is, was a knowing participant therein -- and he committed acts in furtherance of the conspiratorial objectives, then his acts and conduct in furtherance of the conspiracy during its continuance may be considered as the acts of all the other conspirators and as binding upon them.

Summing it up in a simple way, if there was in fact a partnership in crime each member of the partnership acts and speaks for the others in furtherance of the partnership business even if he is not present at the time of the performance of a given act. I shall make further reference to the partnership concept in discussing the substantive charge. The existence of a conspiracy, and one's membership therein, may be established by direct evidence or circumstanti

2 evidence. They are rarely susceptible of proof by direct  
3 evidence. Usually, they are established as a matter of  
4 reasonable inference based upon circumstantial evidence.

5 Direct evidence is where a witness testified  
6 to what he saw, heard and observed, and what he knows  
7 of his own knowledge, that which comes to him by virtue  
8 of his senses.

9 Circumstantial evidence is where facts are  
10 established from which in terms of common experience one  
11 may logically infer other facts that are sought to be  
12 established.

13 Perhaps an example would give you a clearer  
14 idea of what is meant by circumstantial evidence. Assume,  
15 as was the fact, that when we came into this building  
16 today it was a bright, clear and sunny day. You were  
17 assembled when the trial started, but the Venetian blinds  
18 that are behind you were fully drawn, and over the Venetian  
19 blinds there were drapes so that you could not look out,  
20 as, for example, you can at this moment to see what was going  
21 on outside. In the situation I gave you you can't look  
22 outside and see the state of the weather.

23 Say we are sitting here for a period of time,  
24 perhaps a half hour or so, and we see somebody walk in  
25 with an umbrella that is dripping wet -- with water, of



1 course. In a short time, that person is followed by  
2 a man with a raincoat which appears to you to be wet,  
3 and further in a short period of time you hear a pitter-  
4 patter against the window.  
5

6 Now, you cannot look outside and actually see  
7 the state of the weather, but piecing together the fact  
8 and bearing in mind that it was dry when we entered  
9 the building, you see a person walk in with an umbrella  
10 that is dripping wet, followed by a person wearing a  
11 wet raincoat, and with the pitter-patter against the window,  
12 even though you cannot look outside you would be justified  
13 in drawing the inference from those three established facts  
14 that it was raining outside.

15 Now, that is all circumstantial evidence.  
16 You use your common sense based upon an established fact  
17 or in terms of your experience.

18 Circumstantial evidence, if believed, is of no  
19 less value than direct evidence, for in either case you  
20 must be convinced beyond a reasonable doubt of the guilt  
21 of the defendant. In this case, as I have already mentioned,  
22 the government relies upon both direct and circumstantial  
23 evidence. Thus it has offered the testimony of Debra  
24 Bryant as direct evidence of her relationship and conversa-  
25 tions with the defendant, and that she delivered securities

1 mdh

2 which she stole from her employer to the defendant.

3 It also relies upon circumstantial evidence  
4 to establish that the defendant, using the name of  
5 Alphonso Johnson, was in Philadelphia to arrange for  
6 the receipt thereof of the stolen securities which to reach  
7 Philadelphia from New York had to cross state lines.

8 The government contends that the circumstantial  
9 evidence warrants the inference that the defendant knowingly  
10 committed or caused to be committed various acts to effect  
11 and further the transportation of the securities from New  
12 York to Philadelphia.

13 Whether the defendant knowingly and intentionally  
14 participated in the claimed conspiracy presents an issue  
15 of fact. Clearly, the issue concerns what is in one's mind.

16 Medical science has not yet devised an instrument  
17 whereby we can go back to the time of the occurrence of  
18 events and determine what then was that person's intent  
19 and knowledge. These may be determined from one's acts,  
20 his conduct, and surrounding circumstances, and such  
21 inferences which may reasonably be drawn therefrom.

22 If you find circumstances of secrecy, intrigue,  
23 attempts to conceal the true nature of a transaction, or  
24 the use of a false name, these may be considered by you  
25 as circumstantial evidence of criminal intent or of guilty



knowledge.

Now, a word of caution. Mere association of a defendant with an alleged conspirator or conspirators does not establish his participation in a conspiracy if you find one did exist nor is mere knowledge without participation enough. What is necessary, as I have already said, is that a defendant participate in the conspiracy with knowledge of at least some of its purposes and with intent to aid the accomplishment of its unlawful ends.

If you find that the government has sustained the element as to the defendant's knowing and intentional participation in the conspiracy we reach the third element. I have already mentioned the third essential element of the crime of conspiracy is that an overt act intended to effect the object of the conspiracy be committed by at least one of the co-conspirators after the unlawful agreement has been made. An overt act is any step, action or conduct which is taken to achieve, accomplish, or further the objective of a conspiracy.

The purpose of requiring proof of an overt act is that while parties might conspire and agree to violate the law yet they may change their minds and do nothing to carry it into effect, in which event their plan

would not constitute an offense. The overt act need be neither a criminal act nor the very crime which is the object of the conspiracy. Thus, in this case, the overt acts listed in the indictment are -- in furtherance of said conspiracy, and to effect the objects thereof, certain overt acts were committed by defendants in the Southern District of New York, including the following:

1. On or about August 1, 1975, the defendant Albert Duke, also known as Alphonso Johnson, and Debra Bryant, met at a bar in New York.

2. In August, 1975, Debra Bryant stole securities from Pershing & Company, 120 Broadway, New York, New York.

3. In August, 1975, Debra Bryant gave securities stolen from Pershing & Company to Albert Duke at 1 Chase Manhattan Plaza, New York, New York.

4. On or about January 2, 1976, Albert Duke went to Merrill Lynch Pierce Fenner & Smith, Penn Center Plaza, Pennsylvania.

5. On or about January 2, 1976, Albert Duke attempted to open a brokerage account under the fictitious name of Alphonso Johnson.

6. On or about January 16, 1976, Albert Duke also known as Alphonso Johnson obtained a package containing the stolen securities from the Fort Washington Post Office,



3771 Broadway, New York, New York, to Merrill Lynch, Philadelphia, Pennsylvania.

Obviously, for two persons to meet at a bar, or for a person to go to a stockbroker in Philadelphia, in and of itself is not illegal. But if, as the government charges, those acts were done while the conspiracy was at work and for the purpose of furthering and carrying out the conspiracy -- then his acts may lose their innocent character and constitute acts to further illegal enterprise.

However, it is for you to decide whether any of the acts alleged was in fact taken to further the objective of the conspiracy.

It is not necessary for the government to prove that each member of the conspiracy committed or participated in a particular overt act, since the act of any one member of the conspiracy, done in furtherance of the conspiracy becomes the act of all other members.

Also, the government is not required to prove each of the overt acts alleged in the indictment. It is sufficient if it proves the commission of at least one of the acts in the Southern District of New York, which includes Manhattan, at or about the time alleged.

The overt act need not have occurred at the precise time or place alleged in the indictment. So, too, while the

1  
2 indictment alleges that the conspiracy began on or about  
3 August 1, 1975, and continued to on or about the date the  
4 indictment was filed, June 21, 1976, it is not essential  
5 for the government to prove that the conspiracy started  
6 and ended on or about those specific dates. In fact,  
7 from the evidence it would appear that if a conspiracy  
8 did exist it terminated some time in the middle of  
9 January, 1976. Approximate dates are sufficient to establish  
10 either the commission of the overt act or the onset or  
11 the termination of the conspiracy. By no means must the  
12 dates be precise. It is sufficient if you find a conspiracy  
13 was formed and existed for some period of time within the  
14 period set forth in the indictment and at least one of the  
15 overt acts was committed during that period.

16 With these general principles as a guide, you  
17 will consider whether the government has, by the required  
18 degree of proof, established the essential elements of the  
19 conspiracy. If it has, your verdict should be guilty. If  
20 not, your verdict should be not guilty.

21 Since counsel for the government and the  
22 defendant have just reviewed in detail all the evidence  
23 and emphasized their respective contentions and since  
24 the trial has been of such brief duration it would really  
25 be needless repetition again to review the testimony in



1 mdh  
2 detail of the witnesses, and of course the summation  
3 and the evidence touches upon count 2 which I shall presently  
4 discuss.

5 Count 2 of the indictment reads "The Grand Jury  
6 further charges:

7 On or about January 16th, in the Southern  
8 District of New York, Albert Duke, also known as Alphonso  
9 Johnson, and Debra Bryant, the defendants, unlawfully,  
10 wilfully and knowingly did transport and cause to be  
11 transported in interstate commerce from New York, New York,  
12 to Philadelphia, Pennsylvania, securities of a value  
13 exceeding \$5,000, to wit, \$71,000 worth of securities,  
14 knowing the same to have been stolen, converted and taken  
15 by fraud.

16 I have read Section 2314 of Title 18 to you,  
17 but it is desirable to repeat it here. It provides in  
18 pertinent part:

19 "Whoever transports in interstate commerce  
20 securities of the value of \$5,000 or more, knowing the same  
21 to have been stolen, is guilty of a crime."

22 There is no claim that Duke actually stole the  
23 securities. Nor does the government claim that Duke personal  
24 transported the securities from New York to Philadelphia.  
25 The essential claim is that Duke caused the securities to be

transported in interstate commerce by mail from New York City to Philadelphia, Pennsylvania. As I said, it is not required that he personally mail them.

If you find that he knowingly aided and abetted another person to mail them that would be sufficient as hereafter discussed.

In order to find the defendant guilty on this count you must find beyond a reasonable doubt the following essential elements:

1. That on or about January 16, 1976, the defendant caused to be transported in interstate commerce from New York City to Philadelphia, Pennsylvania, the stock certificates now in evidence as Government's Exhibits 1 through 5.

2. That these certificates had been stolen by someone, not necessarily the defendant.

3. That the defendant knew the certificates had been stolen.

And, 4, that the value of the stock certificates was \$5,000 or more.

We will consider each of these elements separately.

As to the first element, that the defendant caused the securities to be transported in interstate commerce, because as here used means to procure or bring about that transportation.



1           The government contends that Duke in his effort to  
2 cash the securities first went to Philadelphia, where  
3 he contacted Mr. Bredin of Merrill Lynch, and arranged to  
4 open an account into which the securities were to be  
5 delivered -- and that thereafter he mailed or caused to be  
6 mailed the stock certificates from New York City to Philadelphia  
7 by registered mail.  
8

9           If you find beyond a reasonable doubt that the  
10 defendant did so mail or cause the securities to be mailed  
11 that would be sufficient to sustain their transportation in  
12 interstate commerce.

13           As to the second element, that the stock certificates  
14 had been stolen, the government relies on both direct and  
15 circumstantial evidence. The direct evidence is the testimony  
16 of Debra Bryant that she stole the stock certificates. The  
17 circumstantial evidence is the documents, Government Exhibits  
18 7 through 11, which the government contends show that these  
19 securities were received at Pershing & Company in the normal  
20 course of business and were later found missing. The unex-  
21 plained disappearance of carefully handled and closely guarded  
22 documents can give rise to an inference that they were stolen.

23           The third element of the offense is that Duke  
24 knew that the stock certificates had been stolen. Here  
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again the government relies on the testimony of Debra Bryant that the defendant knew she had stolen securities since if you accept her testimony she testified that she stole them at the instigation of the defendant and later delivered them to him.

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Additionally, and apart from that, if you do find that she stole the securities, even if not at Duke's instigation, and soon after the theft delivered them to him, then unless the evidence in the case provides a satisfactory explanation you may infer from the defendant's possession of the securities soon after they were stolen that he in fact knew they were stolen. When one is in possession of the fruits of a recently committed crime such an inference is permissible.

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The fourth element is that the certificates had a value of more than \$5,000. The fact that a certificate for shares of stock is not negotiable unless properly endorsed does not mean that is without value. There is in evidence the testimony of Mr. Maialetti of the Philadelphia office of Merrill Lynch that the total value of the certificates at the time they were received in Philadelphia was in excess of \$67,000. There was also evidence of Mr. Johnson of the Post Office that the value of the package was stated at the time of their delivery to him for mailing



2 to be \$50,000.

3 You may consider this testimony as some evidence  
4 of value, as well as Section 2311 of Title 18, and  
5 that again is the United States criminal laws, which in  
6 pertinent part reads as follows:

7 "Value means the face, par or market value  
8 whichever is the greatest, and the aggregate value of all  
9 securities referred to in a single indictment shall constitute  
10 a value thereof."

11 Thus the fact that these securities may not have  
12 been negotiable is not important if you find that their  
13 aggregate face, par or market value exceeded \$5,000.

14 Even if you do not find that Duke actually  
15 mailed the stolen securities himself, you may still find  
16 him guilty on this count. Section 2 of Title 18, upon  
17 which this count is also based, is usually referred to  
18 as the aiding and abetting law and in pertinent part  
19 provides "Whoever commits an offense against the United  
20 States or aids, abets, counsels, commands, induces or  
21 procures its commission, is punishable as a principal."

22 In order to aid or abet another to commit a  
23 crime it is necessary that a defendant in some way knowingly  
24 associate himself with and further the venture intending  
25 by some action of his own that it succeed.

1  
2 In other words, if one fully aware of what  
3 he is doing plays a significant role in facilitating  
4 a transaction prohibited by law he is equally guilty  
5 with the person who directly performs the illegal acts  
6 even though the latter played a much greater or major  
7 part in the perpetration of a crime.

8 Thus if you find in this case that Duke did  
9 not mail the certificates himself but that he knowingly  
10 did some act to aid the person who did mail the securities  
11 then you may find him, providing the other elements  
12 are also found present, guilty on the second count. Even if  
13 you do not find that Duke mailed the securities himself  
14 or that he aided or abetted their mailing he may be found  
15 guilty on this count.

16 You will recall that I previously instructed  
17 that a conspiracy is a partnership in crime in whichever  
18 member is the agent of every other member. Under this  
19 partnership theory if you find that a conspiracy existed  
20 as charged and if you further find beyond a reasonable  
21 doubt that some member of that conspiracy other than the  
22 defendant in furtherance of the conspiracy mailed the  
23 securities from New York to Philadelphia, and if you further  
24 find beyond a reasonable doubt that the defendant on trial  
25 was a member of the conspiracy before or at the time the



1 securities were mailed in interstate commerce, then in those  
2 circumstances that act would be binding on the defendant  
3 and he would be considered guilty of the crime of interstate  
4 transportation of stolen securities even if he was not  
5 the person who actually mailed them.  
6

7 Now, against that background of the law how do you  
8 determine where the truth lies?

9 I mentioned at the very start of the trial  
10 before you heard a single word of testimony that it was  
11 important that you not only listen but observe each person  
12 as he testified. Your determination of the credibility  
13 of a witness very largely depends upon the impression  
14 he made upon you as to whether or not he was giving  
15 you an accurate version of what occurred.

16 How did the witness impress you? Did the  
17 version appear straightforward and candid or did he try  
18 to hide some of the facts? Is there a motive to testify  
19 falsely?

20 In passing upon the credibility of a witness--  
21 and this is particularly applicable of Bryant-- you may  
22 take into account inconsistencies or contradictions as to  
23 material matters in her own testimony or which may be  
24 in conflict with that of another witness.

25 A witness, however, may be inaccurate, contradictory

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2 or even untruthful in some respects and yet be entirely  
3 credible in the essentials of his or her testimony. The  
4 ultimate question for you to decide in passing upon the  
5 credibility of a witness is: Did the witness tell the truth  
6 here before you? It is for you to say whether each witness'  
7 testimony at this trial is truthful in whole or in part  
8 in the light of his or her demeanor, explanations,  
9 and all the other evidence in the case.

10 A witness may be impeached where it appears  
11 that he or she has been convicted of a crime. You are  
12 aware that Debra Bryant testified that she previously  
13 pled guilty to a felony in this court.

14 The law permits you to take that into account  
15 in passing upon her credibility. If you find that Bryant  
16 was a co-conspirator, or a principal in the commission of  
17 the offenses charged, she is what the law defines as  
18 an accomplice.

19 This, too, may be considered by you as bearing  
20 upon her credibility. However, it does not follow that  
21 because a person is an accomplice, or has a prior record,  
22 she is not capable of giving a truthful version of what  
23 occurred. Her testimony, however, should be viewed with  
24 great caution and scrutinized carefully.

25 In the prosecution of crime the government, of



1 necessity, is frequently compelled to rely upon the  
2 testimony of accomplices or persons with prior criminal  
3 records. Often it has no choice in the matter. The government  
4 must take the witnesses to the transactions as they are.  
5 Frequently it happens that only members of a conspiracy  
6 have evidence which is relevant to and important in a case  
7 if a prosecution is to succeed. There is no requirement  
8 in federal courts that the testimony of an accomplice  
9 be corroborated. The conviction may rest upon the un-  
10 corroborated testimony of an accomplice if you find it  
11 credible and believable.  
12

13 Of course, as I said a moment ago, the basic  
14 question is did the witness tell the truth before you?  
15 Parenthetically, however, it should be pointed out that  
16 here the government does claim corroboration as to portions  
17 of Bryant's testimony by the testimony of other witnesses  
18 and documentary evidence. Was her testimony inspired by  
19 any motive of self-interest or hostility, or after her  
20 experience has she told the truth before you and made  
21 a clean breast of events as to which she testified as  
22 a matter of conscience?

23 If you find that any witness-- and this applies  
24 to all witnesses -- wilfully testified falsely to any  
25 material fact you have a right to reject the testimony of

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2 that witness in totality or to accept only that part  
3 or portion which commends itself to your belief, or which  
4 you may find corroborated by other evidence in the case.

5 The defendant has not testified. That is his  
6 absolute right and in no respect may such failure to testify  
7 be considered by you as any evidence against him or  
8 as a basis for any inference unfavorable to him. You  
9 must not permit such fact to weigh in the slightest degree  
10 against him, nor should it enter into our deliberations  
11 or discussion.

12 Thus there are various possible verdicts with  
13 respect to each count. You may find him not guilty on  
14 both counts, you may find him guilty on both counts,  
15 or you may find him guilty on one and not guilty on the  
16 other, as the case may be. To return a verdict in each  
17 instance it must be unanimous. Your function is to weigh  
18 the evidence in the case and to determine the guilt or  
19 innocence of the defendant solely upon the basis of such  
20 evidence and these instructions.

21 Under your oath as jurors, you cannot allow  
22 a consideration of the punishment which may be imposed  
23 upon the defendant, if he is convicted, to enter into your  
24 deliberations or to influence your verdict in any way.  
25 The duty of imposing sentence in the event of conviction is



1 the sole responsibility of the court. Each juror is  
2 entitled to his or her own opinion. Each should, however,  
3 exchange views with fellow jurors. That is the very  
4 purpose of jury deliberation, to discuss and consider the  
5 evidence, to listen to the arguments of fellow jurors,  
6 to present your individual views, and to consult with  
7 one another, and to reach a verdict based solely and wholly  
8 on the evidence.  
9

10 Each one must decide the case for himself or  
11 herself after consideration with your fellow jurors of the  
12 evidence in the case.

13 If you should have a point of view that differs  
14 from that of fellow jurors and if after further discussion  
15 you are persuaded that the point of view originally held  
16 by you should yield in the light of the evidence and  
17 the law there is no reason why you should not change  
18 an originally held point of view provided at all times  
19 that your final vote reflects your own conscientious  
20 judgment as to how the case should be decided.

21 With that, you may remain where you are and I will  
22 hear counsel in the robing room. You may come inside.

23 (In the robing room)

24 THE COURT: You may state your exceptions.

25 MR. AURNOU: Your Honor, the first time you read

Section 2314, I believe, I may be mistaken, you inadvertently said \$500 instead of \$5,000.

THE COURT: I changed it immediately to 5,000.

MR. AURNOU: I believe you did correct it later.

THE COURT: All right, I will read it to them again.

MR. AURNOU: I just wanted to draw it to your attention.

THE COURT: If there is any question I will read it again.

MR. AURNOU: Your Honor also read Section 2311 with regard to value, and you instructed the jury they could determine the face, par or market value of the securities was over \$5,000. On the evidence in this case I do not believe that is correct, your Honor, as to face or as to par, because examining those certificates I think your Honor will find that it would be impossible for a jury to do that.

My next item, your Honor, is that with regard to the conspiracy count where you specifically instructed the jury that co-conspirators need not necessarily intend that the securities be transported in interstate commerce, while it may be the law in the abstract under the peculiar facts it is misleading in that at the point at which the original contact with Debra Bryant takes place I think it



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2           would be fair for the jury to draw the conclusion that  
3           there was then no intention of interstate commerce, and  
4           if that is true that at a later point at which a conspiracy  
5           in fact to transport does come into existence in or around  
6           January that there must be someone other than Debra Bryant  
7           with whom the defendant must have conspired, and that they  
8           must draw a distinction which separates out those two.

9                       Finally, your Honor, when you instructed with  
10           regard to the substantive count, you instructed the  
11           jury both on aiding or abetting, and on the effect of  
12           conspiracy and the act of a co-conspirator to commit the  
13           substantive offense. I make the same observation with  
14           respect to that that I did with regard to the charge on  
15           conspiracy, that on the peculiar facts of this case they  
16           could well say that the mere fact that Debra stole the  
17           securities was enough, and I am suggesting to you that  
18           if there was at that time no intent or knowledge even  
19           that the securities travel in interstate commerce that  
20           wouldn't be correct.

21                       THE COURT: Do you have anything else to say?

22                       MR. AURNOU: No, your Honor. I thank for  
23           a very fair charge.

24                       (In open court. Jury present.)

25                       THE COURT: Members of the jury, I thought I had

1  
2 corrected myself when I misspoke in reading to you one  
3 of the sections, 2314 -- that is, the one which is the  
4 basis of the substantive count and the one where it is  
5 alleged that the defendant conspired with others to violate.  
6 I did make a reference to 500, and I thought I immediately  
7 corrected myself. In any event, this is the portion of  
8 it that is pertinent. "Whoever transports in interstate  
9 commerce securities of the value of \$5,000 or more knowing  
10 the same to have been stolen" is guilty of a crime. I  
11 thought I made it clear at the time, but counsel though  
12 I had not, so I am calling your attention to it.

13 (Marshals sworn)

14 THE COURT: We have two alternates, and I think  
15 you will have no obligation to go into the jury room.  
16 Only 12 of you are permitted to go into the jury room.  
17 I know the two alternates were attentive to the trial and  
18 listened as closely to the witnesses' testimony as all the  
19 others did, but we can only permit 12 to go into the jury  
20 room. Also I think you know we have the alternates to avoid  
21 aborting a trial where a juror becomes ill and for some  
22 reason cannot continue with the trial and we want to make  
23 sure we always have 12 jurors.

24 I want you assure you that your service to the court  
25 was just as valuable as if you continued with the trial and



1  
2 went into the jury room to deliberate. This has been a  
3 fairly short trial, but sometimes we have trials that  
4 go on for eight or ten weeks, and then at the end the  
5 alternates are not permitted to go in. I don't know if  
6 the alternates have a sense of relief or frustration that  
7 they cannot go in. I want you to know your services are  
8 just as important as your fellow jurors who will carry  
9 on the case to a conclusion, so we will excuse you for  
10 the term.

11 The marshal has been sworn. I have a clean copy  
12 of the indictment. Show it to Mr. Aurnow.

13 Then you may go with the marshal.

14 (Jury retired to deliberate upon a verdict.)  
15  
16  
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2 (3 P.M. note from the jury. In the robing  
3 room.)

4 THE COURT: I have a note from the jury which  
5 reads "We are requesting the Government's Exhibits 12, 13,  
6 18, 20, 31, 32, 33.

7 Bank photos, blowup of fingerprints.

8 Also 1 through 5."

9 Will you assemble them and hand them over to the  
10 clerk.

11 (Court Exhibit 1 marked.)

12 THE COURT: The clerk will deliver them to the  
13 marshal for delivery to the jury.

14 (Note from the jury at 3:55 P.M.)

15 (In open court. Jury present 4:10 P.M.)

16 THE CLERK: Members of the jury, please answer to  
17 your presence as your name is called.

18 (Roll call. All jurors present.)

19 BY THE CLERK:

20 Q Madam forelady, has the jury agreed upon a verdict?

21 A Yes, they have.

22 Q How do you find the defendant Albert Duke  
23 as to count 1?

24 A Guilty.

25 Q How do you find the defendant as to count 2?



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2 A Guilty.

3 Q Madam forelady, listen to your verdict at it  
4 stands recorded. You say you find the defendant Albert  
5 Duke guilty as to count 1 and guilty as to count 2,  
6 and so say you all.

7 THE FORELADY: Yes.

8 THE COURT: What is the status of the jury?  
9 Are they to be excused?

10 THE CLERK: Yes.

11 THE COURT: Members of the jury, before you go  
12 I am just going to detain you for a short period of time.  
13 As I recall it, a fair number of you have never served  
14 on a jury before, and this is your first jury experience.

15 Before you leave, and I am told you will not be  
16 required for further jury duty in this court at this time,  
17 you will be excused for the term, I just want to pass a  
18 comment. I think a practice has developed, and perhaps  
19 some of you have seen it on TV or heard of it from your  
20 friends, that when a jury renders a verdict the court thanks  
21 a jury for its service. I have never ever thanked a jury for  
22 its service or rendering a verdict in a case, and since  
23 this practice has developed, and I don't want you leaving  
24 the courtroom wondering why in this case I haven't done  
25 it I will just detain you for a moment with a brief word

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of explanation.

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You were called upon as citizens to perform a very important service, one that I regard as the highest duty of citizenship, and that is to play a part in the administration of justice. You will recall at the very start of the trial you were sworn in this case to render a just and true verdict.

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You took an oath to render a fair and impartial verdict based upon the law and the evidence in the case.

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The oath that you took, while not exactly like that of a judge, is pretty much akin to it, which means that without regard to who or what the persons are, in effect you call the shots as you see them. I have always felt that those of us who were privileged to play a role in the administration of justice when we live up to our oath of office should not expect to be thanked for it. I often tell jurors that the thanks that you must expect comes from the knowledge that when these problems come up involving people in the community and the community itself that we should be thankful we live under a system or a society of justice where citizens play an important role in it, and when you do participate in the administration of justice and sit in judgment in a case you are simply living up to a very solemn oath of office, and for that



1  
2 reason I say that I never thank a juror, just as I never  
3 permit anybody to thank me, when I render a judgment in a  
4 case. I sit in civil cases, I sit in criminal cases, or  
5 non-jury cases where a defendant waives his right to a trial  
6 by jury, and I have never permitted anybody to thank me  
7 for any judgment I render in a case. We call the shots  
8 as we see them. As I say, as far as the jurors are concerned,  
9 your thanks must come from the knowledge that we do have  
10 this system of justice.

11 One other item. Sometimes jurors are curious  
12 to know what the judge thinks about their verdict. With  
13 very rare exception I have never commented upon a jury  
14 verdict. I told you this afternoon, as I did at the start  
15 of the trial, that you were the judges of the fact and it is  
16 your responsibility. Whether or not the judge agrees with  
17 you is unimportant. The judge's only concern is that a  
18 jury conscientiously sit in judgment, pay attention to  
19 the evidence in the case, and decide the issues in the  
20 case conscientiously.

21 In the short period of time you were here it was  
22 very evident to me that every one of you was paying the  
23 strictest and closest attention to the trial, listened  
24 attentively, and I have no doubt that your judgment was  
25 arrived at conscientiously and in full consideration of all

the evidence in the case.

So I say I never comment on a jury verdict. I do hope particularly those of you who are sitting as jurors for the first time that your experience here has been such that you understand, one, the great importance of jury duty. It is a great privilege, it is a great responsibility, and that whenever you will be called again, or should be called again to jury duty, whether in the federal court or in the state court, understanding its importance you will look forward eagerly to playing this important role in the administration of justice.

With that I say good day to you, and as I say I hope whenever you are called again you will look forward eagerly to coming to the courthouse.

Your services will not be required the balance of the term. You will be excused for the balance of the term. With that I will say good day to all.



CERTIFICATE OF SERVICE

December 9, 1976

I certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Southern District of New York *and to appellant Albert Duke.*

*R. J. - S. H. Brown*